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Introduction

1. The Office in Colombia was established under the Agreement signed in Geneva on 29 November 1996 by Mrs. María Emma Mejía Vélez, Minister for Foreign Affairs of Colombia, and Mr. José Ayala Lasso, the then United Nations High Commissioner for Human Rights. This Agreement establishes the Office's mandate and functions. 1/ The Office began work with the arrival of its Director in Colombia on 6 April 1997.

2. At its fifty-third session, the Commission welcomed the opening of the Office and acknowledged the efforts carried out by the Government of Colombia in the field of human rights and its willingness to cooperate with the special rapporteurs and working groups. Nevertheless, it reiterated its concern at the persistence of thousands of violations of the right to life, the practice of enforced disappearance and torture, the increasing involvement in the conflict of paramilitary groups and the persistence of an alarming level of impunity. It likewise urged the Government to continue to strengthen its support for all those who promote the defence of human rights. At the same time, the Commission urged the guerrilla groups to respect the norms of international humanitarian law and to abandon the use of abduction, hostage-taking, anti-personnel landmines, indiscriminate killings and all attacks on the civilian population.

3. The Director is supported in her work by 6 experts on mission, a legal adviser, a security officer and 10 persons performing administrative and service functions. The Office's headquarters are in Santa Fé de Bogotá. Its financing has been made possible by contributions from the European Commission, Cyprus, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. The Colombian Government, for its part, has contributed by making available the premises occupied by the Office.

4. The Office has been well received by the Government and by Colombian society in general. As an example, the President of the Republic received the Director days after her arrival in Bogotá and reiterated his Government's support to the Office. Additionally, on 25 April 1997, he issued Presidential Directive No. 05, in which all agencies of the executive power, including the armed forces and the national police, were informed of the Office's establishment and functions and were recommended to collaborate with it. The Office has enjoyed the cooperation of State and government institutions and has been able to conduct its activities in Colombia without any impediment.

I. THE NATIONAL CONTEXT

A. Constitutional system and international treaties ratified by Colombia

5. Under the existing Constitution, public power is exercised in Colombia through three branches. The first is the executive, whose head, the President of the Republic, simultaneously performs the functions of Head of State, Head of Government and supreme administrative authority and holds the post of Supreme Commander of the Armed Forces. The second is the legislative branch, consisting of the Congress, a bicameral body which performs the functions of making laws, exercising political control over the Government and the

administration, and amending the Constitution. The third is the judicial branch, which is composed of the Constitutional Court, the Supreme Court of Justice, the Council of State, the Higher Council of the Judicature, the Office of the Procurator-General of the Nation (Fiscalía General de la Nación) and the other courts and judges responsible for administering justice.

6. The investigation of offences is the task of the Office of the Procurator-General of the Nation. Responsibility for trying cases lies with the ordinary criminal courts or the regional courts.

7. The military criminal courts do not belong to the judicial branch of the public power, but to its executive branch. They investigate and try offences committed by members of the armed forces and the police on active service and in connection with that service. They include courts martial and military courts regulated by the Military Penal Code.

8. The provisions of the Constitution also provide for the existence of two supervisory organs. The first is the Office of the Comptroller General of the Republic (Contraloría General de la República) and the second is the Government Procurator's Office (Ministerio Público) consisting of the Office of the Attorney-General of the Nation (Procuraduría General de la Nación), the Office of the People's Advocate (Defensoría del Pueblo), headed by an "Ombudsman", and district and municipal representatives. While the first body is responsible for monitoring the fiscal management of the administration and of individuals or entities which handle funds or assets belonging to the nation, the second is responsible for safeguarding and promoting human rights, protecting the public interest and overseeing the official conduct of agents of the State.

9. The Republic of Colombia is a founder Member of the United Nations and a State party to many international legal instruments on human rights and international humanitarian law. Among the treaties on the subject ratified by the Colombian State are the International Covenant on Civil and Political Rights and the first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the four Geneva Conventions of 12 August 1949 and Protocols I and II of 1977 additional to those Conventions.

10. Under the Constitution, the provisions of these treaties, once they have come into force, become part of the "constitutional bloc" and acquire the same status as the provisions originally included in the text of the Constitution. For the protection of human rights, the Constitution itself establishes various mechanisms of a judicial nature in order to guarantee the exercise of constitutional rights. The main ones are the writ for the protection of constitutional rights and the remedy of habeas corpus. The former, the introduction of which fulfils the requirement of article 2, paragraph 3 (a) of the International Covenant on Civil and Political Rights, may be invoked by anyone who, as a result of any action or omission of the authorities, finds

any of his fundamental rights to be infringed or threatened. The latter, which meets the requirement of article 9, paragraph 4 of the Covenant, may be invoked by anyone who believes he has been deprived of his freedom illegally.

B. The context of violence and internal armed conflict

11. Violations of human rights and breaches of international humanitarian law in Colombia take place within a broad and complex context of socio-political violence, and their analysis lies outside the scope of this report. Some aspects of this background nevertheless need to be mentioned.

12. Colombia has historically been marked by political and social violence. In this century, the phenomena of political, economic, social and cultural exclusion led to the peasants' campaigns of the 1930s and 1940s, and, later on, to a long period of violence between the two traditional parties, the Liberals and the Conservatives. In 1957, by means of a constitutional reform, a system of alternation and parity between these parties was established. This meant that other political sectors were deprived of any share in power. From the 1960s onwards, a guerrilla movement came to prominence and its origins can in part be explained by the context of the polarization and cold war prevailing at that time. In order to deal with this rebellious movement, the State involved groups of armed civilians in its counterinsurgency activities, and with the passage of time these groups became a new source of disturbances of law and order. In the 1970s, the drug trafficking phenomenon came to the fore and, spreading to broad sections of Colombian society, gave rise to new forms of criminality and corruption.

13. Colombia continues to suffer from one of the highest homicide rates in the world. Within the context of violence, reference should be made to the crime generated by organizations of drugs dealers, which have even gone to the lengths of terrorist attacks, with explosives planted in public places. There is evidence of the support these organizations give to paramilitary groups, which on occasion act as private armies of the drug cartel bosses. In the areas the insurgent groups control, they permit and control coca cultivation and illicit trafficking, benefiting economically from the contributions they exact from those involved.

14. The increase in violence and escalation of the armed conflict have seriously damaged the country's economy, causing disinvestment, unemployment, a drop in the production of basic foodstuffs, marginalization and poverty. The Inter-American Development Bank (IDB) calculates that the cost of crime means that Colombia is losing more than 2 percentage points in the annual growth of its gross domestic product. According to IDB statistics for February 1996, the accumulated effect between 1970 and 1993 is such that a less violent Colombia would have a per capita income some 32 per cent higher than at present.

C. Situation in 1997: Electoral process and peace process

15. Attention must be drawn to two political events of the highest importance: the first is the electoral process which will culminate in June 1998 with the election of a new President, and the second is the broad debate in Colombian society about the possibility of a peaceful outcome to the

present armed conflict. Both these factors seem to be linked to the increased violence by armed groups, which are trying in this way to influence the election results before the opening of any peace negotiations.

16. The elections for new departmental and municipal authorities held on 26 October 1997 were marked by the threats and attacks to which candidates were exposed. Despite this, the citizens' initiative known as the "Mandate for Peace", involving more than 400 organizations of civil society, secured nearly 10 million votes for a peaceful settlement of the conflict and observance of the rules of international humanitarian law. This initiative had the support of UNICEF and reinforced the efforts of the National Conciliation Commission, a non-governmental body which, with the support of the Catholic Church, is working for reconciliation.

17. The Government of President Samper adopted a series of measures to promote conditions for the opening of a dialogue. The great majority of presidential candidates declared that they were committed to a policy of peace.

18. In their turn, economic groups, major trade-union bodies and other sectors of society expressed their intention of contributing to the process by considering proposals relating to the country's serious social and economic problems.

19. The guerrilla groups, although reserved in their response to the Government's offers of dialogue, laying down conditions, are said to have made it known through various contacts, which include local authorities, "that they maintain their belief in the need to develop a process that will culminate in reconciliation of the Colombian family" (Revolutionary Armed Forces of Colombia - FARC). In January 1998, the National Liberation Army (ELN) replied to a letter from the coordinating committee of the citizens' "Mandate for Peace" initiative, expressing its willingness to pursue talks on the movement's aims. The paramilitaries, for their part, let it be known publicly that they intended to participate in the process, demanding political recognition and announcing the changes they proposed for the country: "We recognize identity and convergence in many aspects of what the guerrillas and self-defence units are claiming from the State, as a condition for smoothing the way to peace" (statement by the paramilitary United Self-Defence Groups of Colombia, 26 June 1997).

20. Nevertheless, in 1997 there has been an intensification of the conflict and although there have been repeated promises on either side to observe and comply with the rules of international humanitarian law, the number of non-combatant victims so far is disturbing.

II. THE SITUATION OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

A. Main violations of human rights and international humanitarian law

21. Behaviour contrary to rights recognized by international instruments for the protection of human rights constitutes a violation of those instruments when it is engaged in by agents of the State or private persons acting at

their instigation, with their acquiescence or with their complicity. Such behaviour is classified in this report along the lines indicated by international human rights law.

22. In the case of Colombia, breaches of international humanitarian law consist mainly in actions or omissions contrary to the provisions of common article 3 of the four Geneva Conventions and Additional Protocol II to those Conventions that are attributable to any person or group participating directly in the hostilities.

23. Under the international system, the insurgent groups in Colombia can only be responsible for breaches of international humanitarian law. When human rights violations occur within the context of the armed conflict, the Office of the High Commissioner in Colombia takes into account the fact that they also constitute breaches of international humanitarian law.

24. The Office has received complaints from State institutions, non-governmental organizations (NGOs) and private individuals. In many cases it has been able to talk to the victims and eyewitnesses, thus obtaining first-hand information and verifying its authenticity. It has also received many complaints from the armed forces and the national police about behaviour attributed to groups of armed insurgents. The insurgent groups have not sent any complaints to the Office, which makes it difficult to flesh out and check the information available on violations of international humanitarian law. The statistics provided in this report come, apart from those contained in complaints received by the Office directly, from government sources, NGOs and public information available in the country.

25. According to non-government sources, between October 1996 and September 1997 a total of 3,439 persons were victims of socio-political violence. Of these violent incidents it is estimated that 76 per cent were attributable to paramilitary groups, 18.6 per cent to guerrillas and 4.4 per cent to the armed forces and police. According to these statistics, violations by paramilitaries had increased by comparison with previous years, while those by insurgent groups and the armed forces had declined.

1. Civil and political rights

(a) Right to life

26. Reports received by the Office of the High Commissioner in Colombia make it clear that violations of the right to life committed by members of the armed forces, the police and paramilitary groups and killings by subversive groups have been occurring on an alarming scale in Colombia. According to data provided by the Centre for Research and Popular Education - Justice and Peace (CINEP), a total of 3,341 persons met with violent deaths between January and September 1997. The Office of the People's Advocate reports having received 398 complaints during 1996 on deprivation of the right to life. 2/

(i) Violations of and threats to the right to life by the armed forces, the police and paramilitary groups

27. The Office has received complaints about violations of the right to life attributed to the armed forces, paramilitary groups and the police. In some cases, witnesses report that the actions that led to these violations were carried out jointly by military and paramilitary personnel. In others, it is alleged that the paramilitaries had logistical support from the military, or tacit support, reflected in a failure to pursue those presumed to be responsible. Different sources consulted by the Office concur in stating that the paramilitary groups appear to be responsible for the greatest number of violations of the right to life. According to reports received by the Office, in the single municipality of Dabeiba, Antioquia Department, the paramilitaries who control the area killed over 100 people between January and November 1997.

28. The massacres carried out by paramilitary groups have continued throughout 1997. According to non-governmental sources, between October 1995 and September 1996 there were 78 massacres with a total of 437 victims. 3/ Similarly, according to other sources, 4/ between January and November 1997, 31 massacres with a total of 265 victims were attributed to paramilitary groups. In many cases violations of the right to life of this kind are preceded by torture and public brutality intended to terrorize the population.

29. In the middle of 1997, after the massacre at Mapiripán, Meta Department, Carlos Castaño, supreme leader of the paramilitary United Self-Defence Groups of Colombia, told the press that there would be "many more Mapiripáns". Since that date, and up to the end of November 1997, there had been 15 massacres with a total of 165 victims. As in the case of selective executions, witnesses frequently state that these were actions perpetrated by members of the armed forces passing themselves off as paramilitaries, joint actions by members of the armed forces or police and paramilitaries, or actions by paramilitaries enjoying the complicity, support or acquiescence of the regular forces. The details of the cases reported to the Office in Colombia suggest that these events could not have occurred without such acquiescence, support or complicity.

30. It also has to be said that violations of the right to life of members of marginalized groups are still widespread. Information supplied to the Office refers to violations of the right to life of ordinary criminals, homeless persons, drug addicts and prostitutes attributed to members of the "Convivir" associations.

31. In 1997, the Special Rapporteur on extrajudicial, summary or arbitrary executions transmitted allegations of violations of the right to life of 181 persons committed for the most part by members of paramilitary groups and the army. The Rapporteur also transmitted to the Government a letter dated 13 August 1997 in which he expressed concern at the number of massacres reported and referred specifically to those at Vegachí (Antioquia) in February 1997 and at Mapiripán (Meta) in July 1997.

32. Also in 1997, the Special Rapporteur transmitted 24 urgent appeals to the Colombian Government requesting that the necessary steps should be taken

to protect the physical integrity and right to life of persons who had received death threats from members of the armed forces, the police, paramilitary groups or individuals cooperating with them. These urgent appeals included requests for protection for human rights activists, priests, trade unionists, municipal representatives and peasants' representatives.

33. The civilian population have often been threatened by the combatants in the conflict, whether to get them to cooperate with one side or the other, or to dissuade them from doing so. Death threats are generally a signal that there are going to be attempts on people's lives and lead to forced departure and exile. This is practised on a massive scale in rural areas, especially against members of the population, in order to intimidate them and provoke an exodus.

34. The Office in Colombia has received reports indicating that in many cases paramilitary raids on the peasant population were preceded by the passage of army personnel, who recommended the inhabitants to leave the region "because the people arriving after us are those who cut you into little pieces".

35. Accordingly, some of the urgent appeals by the Special Rapporteur on extrajudicial, summary or arbitrary executions were sent on behalf of the civilian population of various municipalities (civilian population of the communities in the north-east of Chocó, inhabitants of the municipalities of Remedios, Yondó and Cantagallo, inhabitants of the municipality of El Carmen de Atrato, civilian population of the municipality of Segovia, civilian population of El Carmen de Bolívar and San Jacinto, among others), following increased paramilitary activity in those areas resulting in fears for their physical integrity.

(ii) Killings by the guerrilla forces

36. The armed forces reported to the Office of the High Commissioner in Colombia that 47 soldiers of the national army had lost their lives after being taken prisoner by the guerrillas. Three of the captives were said to have been finished off when they were wounded and defenceless. According to the same sources, another 14 soldiers were killed by the guerrillas while on leave.

37. According to reports by the armed forces, 166 civilians died at the hands of guerrilla groups. The Colombian Commission of Jurists, for its part, reports that armed insurgent groups were responsible for the deaths of 217 persons in the period between October 1995 and September 1996. The Office received information from individuals about the deaths of 88 civilians at the hands of different insurgent organizations. In many cases the guerrillas describe persons protected by international humanitarian law as "military objectives", implying that they regard them as legitimate targets. It is also alleged that guerrilla groups consider it justified and legitimate to make attempts on the lives of persons accused of being informers for the armed forces or police, or collaborators with the paramilitaries. In the areas controlled by insurgents, they are said to be responsible for the deaths of ordinary criminals and drug addicts.

38. The guerrillas have also been responsible for massacres. Thus, according to non-governmental sources, between January and November 1997, they committed 14 massacres of civilians, with a total of 95 victims.

39. The practice described above of threatening the civilian population applies also to guerrilla groups participating in the conflict. Similarly, in areas controlled by insurgent groups threats for purposes of extortion are common, the guerrilla groups demanding collaboration in cash or in kind. Frequently the threats have the purpose or consequence of forcing individuals or families to leave. If, moreover, the persons threatened do not comply, the guerrillas murder them or expel them from the area.

40. The armed forces informed the Office of six cases of threats by subversive groups against civilians and relatives of members of the armed forces. In addition, reports have been received from individuals concerning 10 cases of threats by guerrilla groups against civilians. The Office of the People's Advocate states that it received 634 reports of death threats in 1996. 5/

(b) Right to personal security

(i) Enforced disappearances

41. The Office of the People's Advocate states that between 1994 and 1996 1,012 cases of enforced disappearances were reported to it. CINEP-Justice and Peace reported that between January and November 1997 there were 87 cases, of which 81 were attributed to paramilitary groups and 6 to the army. The Association of Relatives of Disappeared Detainees (ASFADDES) recorded 37 cases in 1997.

42. During the first eight months of its work in Colombia, the High Commissioner's Office received complaints relating to 72 cases. In 27 of them, responsibility was attributed to State agents. Most of the others were attributed to paramilitary groups, and some to persons unknown. Cases were also reported in which responsibility was attributed to the paramilitaries acting jointly with the armed forces or police.

43. The Working Group on Enforced or Involuntary Disappearances transmitted 36 new cases to the Government in 1997, of which 16 had occurred in that year. This brought the total number of Colombian cases pending before the Group to 782.

(ii) Hostage-taking and abduction

44. The prohibition of hostage-taking, embodied in article 4, paragraph 2 (c) of Protocol II Additional to the four Geneva Conventions, applies to abduction for purposes of extortion by the combatants in the context of the Colombian internal armed conflict. Such abduction is being practised systematically by guerrilla groups to finance their activities.

45. The National Police state that between January and October 1997 the guerrillas abducted 585 persons. The Presidential Programme for Abduction Victims records 382 abductions by the guerrillas in the same period.

The armed forces submitted complaints to the Office concerning the abduction of 53 persons by the guerrillas between 1992 and 1997, including 17 foreigners.

46. Paramilitary groups also resort to this practice, in particular abducting guerrillas' relatives as a reprisal against them. Some members of the armed forces and police have been involved in this practice.

(c) Torture and cruel, inhuman or degrading treatment

47. The Office of the People's Advocate speaks of 65 cases of torture reported to it in 1996. In its data bank, CINEP-Justice and Peace has records of 155 cases between October 1996 and September 1997. Up to November 1997 the Office had received information on 28 cases.

48. The People's Advocate says that the torture statistics for Colombia do not reflect the actual frequency with which this crime is committed, because many of the persons tortured only appear in the lists of victims of enforced disappearance or extrajudicial execution. The Advocate also stated that in many cases, when torture took place while the person was in the custody of agents of the State, the victims were obliged to declare in writing that they had been well treated. Many people did not report being tortured for fear of being executed subsequently.

49. The Colombian Commission of Jurists said that paramilitary groups were responsible for 77 per cent of cases of torture and had made it a practice to torture people in public, and then to shoot them or to cut their throats. Many cases of torture were attributed to members of the armed forces or police, and not just in those areas of the country where hostilities were taking place in the armed conflict. The armed forces, for their part, reported to the Office eight cases of torture of captured soldiers, for which they held guerrilla groups responsible.

50. The practice of torture is forbidden under common article 3 of the four Geneva Conventions and under article 4, paragraph 2 (a) of Additional Protocol II.

(d) Freedoms

51. Many international instruments for the protection of human rights ratified by Colombia guarantee freedom of thought, expression, association and assembly, and are duly protected by the Constitution. However, the Office was able to establish that these rights were seriously jeopardized in practice and that there were no real safeguards for their free exercise.

(i) Trade-union freedom

52. For the International Labour Organization (ILO), trade-union freedom has to be guaranteed both in law and in practice, the State being internationally answerable for violations of that freedom. The ILO Committee on Freedom of Association considers the Colombian case to be one of extreme gravity and has expressed its concern at the climate of terror resulting from death threats to trade unionists, which interferes with the conduct of trade-union activities.

53. According to information from the data bank of the National Trade Union School, between 1 January and 15 October 1997 123 workers belonging to trade unions were murdered, of whom 25 per cent were union leaders. The sectors most affected were workers belonging to agricultural trade unions and craftsmen (43.27 per cent of trade-union members murdered were craftsmen, according to the same source). During this same period, seven trade unionists were victims of enforced disappearances. There were also reports of threats against trade-union leaders and members, bomb attacks on trade-union premises, persecution of workers for trade-union activities and kidnapping of foreign workers.

54. The paramilitary groups are said to be stepping up their attacks on trade unionists, whereas there is a drop in the number of violations attributable to insurgent groups by comparison with the previous two years.

(ii) Freedom of thought and expression

55. Although great freedom of expression can be found in the media, including strong criticism of the Government, something should be said about the situation of Colombian journalists, who are exposed to all types of attacks in the course of their work. The Office of the High Commissioner in Colombia was informed that in 1997 four journalists had been murdered precisely because of their work as journalists. Many have been kidnapped or threatened, some being obliged to leave the country. These murders and threats create a justified feeling of insecurity among journalists, which results in "self-censorship" in their actual work, seriously endangering the right to inform and to be informed.

(iii) Exercise of political rights

56. According to the law and order report prepared by the Ministry of the Interior for the period January-August 1997, there were 196 offences against candidates and serving mayors and councillors, including 78 abductions, 72 murders, 33 terrorist acts, 21 attacks and 4 disappearances.

57. A military intelligence report published in the press in May 1997 claimed that 650 mayors (representing over half the municipalities in Colombia) had direct relations or collaborated with the guerrillas. The mayors in question interpreted this as a threat.

58. Colombian political activity is characterized by a high degree of intolerance towards opposition parties and movements. The most striking example is the case of the Patriotic Union, whose activists have been the victims of systematic executions. More than 1,500 members of this party have been assassinated since it was formed in 1985, including elected officials and almost all its representatives in Congress. Others have had to go into exile and give up their political posts.

59. Members of M19 and the Peace, Hope and Freedom Movement, composed of former guerrilla fighters who have returned to civilian life, stated that they had been threatened and attacked by the guerrillas.

60. A few days before the elections of 26 October 1997, two electoral observers for the Organization of American States (OAS) and an Antioquia government official were abducted by the National Liberation Army (ELN), being released some days later. The Office received complaints from the Patriotic Union and the Communist Party, reporting that various of their members had had to leave the country because of threats during the electoral process. The Liberal Party also reported the assassination of some of its members as a means of exerting pressure in connection with the electoral process, among whom mention should be made of Senator Jorge Cristo Sahium, a killing claimed by the ELN.

(e) Right to due process

61. In the latest report by the People's Advocate to Congress, he states that his Office received 2,227 complaints in 1996 about infringements of the right to due process.

62. The Office of the High Commissioner in Colombia has received complaints from defence counsel and accused persons which report serious procedural irregularities. These occur, generally, in connection with the proceedings of regional courts. All the complaints indicate that the opportunities for challenging the evidence for the prosecution and putting that for the defence are severely limited. This is particularly flagrant in cases in which there are witnesses whose identity is not revealed.

63. In addition, the right to presumption of innocence has been violated through the application of the procedural rules governing the operation of the Office of the Public Prosecutor. This body has the legal power to order a person to be taken into custody when the proceedings are still at the investigation stage, without any charges having been brought. This in practice reverses the presumption of innocence, since it implies a presumption of the defendant's guilt. It is a matter of concern that in some cases the performance of the staff of the Prosecutor's Office is measured by the number of charges brought and that this figure is taken into account in determining whether they are to be kept on and/or promoted within the service. In the opinion of the Office in Colombia, this has created a bias in favour of presumptions that are not acceptable under international rules on human rights.

B. Specific aspects of international humanitarian law

1. Damage caused to the civilian population

64. The Office of the High Commissioner in Colombia observes that the combatants use the civilian population to protect themselves from enemy fire, and that these civilians are forced to move and their access to food and medicines is restricted, in flagrant violation of articles 13, 14 and 17 of Protocol II Additional to the Geneva Conventions. The inhabitants of rural areas are particularly exposed to indiscriminate attacks by all protagonists in the conflict.

65. Cases have been reported to the Office in which the combatants have made use of civilian vehicles and homes or have mingled with civilians during

military operations, putting them in a situation of extreme danger. In other instances, they have carried out indiscriminate attacks on populated areas, injuring or killing civilians and damaging civilian property.

66. The Office has also received reports of attacks on the civilian population attributed both to insurgent groups and to paramilitary and armed forces personnel. The attacks by the paramilitaries have been particularly cruel and have taken the form, inter alia, of massacres, reported in another chapter of this report, and the destruction of civilian property.

67. Both the armed forces and the insurgent groups use mines, justifying their use as strictly defensive. However, in several regions of the country where enormous numbers of mines have been planted in the course of 30 years of conflict, it is the civilian population which is most affected. There is no comprehensive information on the magnitude of this problem. The Colombian Commission of Jurists reports that anti-personnel mines killed 16 civilians and injured 30 between October 1995 and September 1996.

2. Attacks on civilian property

68. While acknowledging that not all attacks against civilian property are covered by the humanitarian norms set out in Protocol II Additional to the Geneva Conventions, the Office in Colombia expresses its concern at the systematic practice of acts of this nature. Attacks on oil pipelines by insurgent groups cause oil spills which seriously damage agricultural areas, sources of drinking water and inhabited areas. The report on this problem by the People's Advocate refers to 636 attacks on oil pipelines by guerrilla groups between 1986 and 1996. According to the same report, the attacks caused loss of life on two occasions as a result of fires started by the explosions.

69. Another guerrilla practice is to burn vehicles at roadblocks set up for the purpose, after forcing the passengers to get out. According to the National Carriers' Association, 319 vehicles have been burned in Colombia in the last three years. The Governor of Antioquia reported to the Office that 105 buses had been burned in 30 attacks by the FARCs and the ELN in the run-up to the elections.

70. The armed forces also reported to the Office six guerrilla attacks against public installations, including an attack on the generators of Guatapé power station in Antioquia, putting it out of commission.

3. Protection of medical duties, the wounded and the sick

71. Articles 10 and 11 of Protocol II Additional to the Geneva Conventions provide for the protection of medical duties compatible with medical ethics. However, the Office in Colombia has observed, from testimony collected in the field, that violations of these basic principles of international humanitarian law continue to occur in Colombia. Hospitals and medical vehicles have been the target of armed attacks, some doctors have been forced to carry out acts contrary to medical ethics, and in conflict areas they are subjected to

pressure and threats by the various combatant groups. A complaint has been submitted to the Office concerning the extrajudicial execution of civilians who had assisted injured guerrilla fighters, in violation of article 7 of Additional Protocol II.

4. Recruitment of minors

72. According to various NGOs and institutions, children under 15 years of age have long been recruited by the various protagonists in the armed conflict. The People's Advocate, for example, gives a figure of 15 per cent for minors among the members of paramilitary groups, while the figure drops to about 7 per cent and 10 per cent respectively for children under 15 and under 17 in the ranks of the guerrillas. The Colombian Commission of Jurists reports that to its knowledge 17 young people under 18 years of age were taking part in guerrilla activities between October 1995 and September 1996.

73. Article 4, paragraph 3 of Protocol II Additional to the Geneva Conventions prohibits the recruitment of children under 15 years of age in the armed forces or armed groups. Up to December 1997, Colombian legislation contained provisions which allowed the immediate recruitment for military service of young men who had obtained their school-leaving certificate, whatever their age. Colombia has very recently adopted legal measures to prevent the recruitment of minors. It should also be mentioned that in 1996 Colombia withdrew the reservation which it had entered when ratifying the Convention on the Rights of the Child, whereby it would not recruit persons under 18 years of age.

C. Economic, social and cultural rights

74. The Office has not had the capacity to carry out a detailed follow-up of this important group of rights, nor has it received complaints of violations of these rights. However, on the basis of the joint country evaluation document prepared by the bodies of the United Nations system present in Colombia, the Office is able to make the following observations.

75. Perhaps on account of an almost complete lack of a tradition of effective social protection and inadequate integration of the social fabric, Colombian society, like many others, has no collective awareness of the universal nature of these rights, or of the social obligation of avoiding discrimination in the ability to exercise them. Hence the crucial aspect in analysing economic, social and cultural rights is not their legal recognition but the possibility of rendering them effective.

76. The level of poverty affecting a large part of the Colombian population gives cause for concern. There is a lack of effective social protection in Colombia to guarantee a minimum level of subsistence in terms of food, housing, education and health care, and also a healthy environment. Income distribution in Colombia is among the most uneven in Latin America; the richest 25 per cent of the population earn 30 times more than the poorest 25 per cent. It is also one of the few Latin American countries where income distribution has worsened in this decade. The percentage of the population unable to afford a minimum basket of goods increased from 54 per cent in 1994 to 57 per cent in 1997 (data from the National Department of Planning).

1. Education

77. The national illiteracy rate is 10 per cent; it is very unevenly distributed since in some regions it is as high as 25 per cent. Public spending on education is slightly more than 4 per cent of GDP and private spending is at least 1.1 per cent of GDP. Compared with other countries in the region, expenditure on primary and secondary education is proportionally much lower than on higher education.

2. Health

78. Colombia is the Latin American country which spends most on health. In 1996, this expenditure amounted to 10 per cent of GDP, including direct public spending, insurance contributions and private spending. From 1994 to 1995, the amount of public resources in real terms allocated to the health sector grew by some 80 per cent. Although health-specific resources are exceptionally high, the result has not been increased enjoyment of this right throughout the country. In 1993, the Health Social Security System was established, unifying the social security system for workers in the formal sector, the free or semi-free public service and the private services. However, in practice the three components still exist, along with a high level of discrimination on the basis of the income and employment status of the users.

3. Housing

79. Colombia has a problem of access to housing. According to the 1993 population and housing census, 15 per cent of Colombians were living in conditions of critical overcrowding and 9.9 per cent in inadequate housing. The system of housing purchase subsidies has so far proved inadequate since dubious practices like corruption continue to exist, the main impact of which is on the most deprived sectors.

80. Another restriction on access to housing can be found in the high rates of interest on housing loans and the high levels of speculation in the prices of urban land. Drinking water and sanitation services are scarce, particularly in rural areas, while the electricity network has grown considerably.

4. Wages and employment

81. Unemployment has increased considerably, from 7.8 per cent in 1990 to over 12 per cent at the end of 1997. Young people and women are most vulnerable to unemployment. A labour protection model which is obsolete in its conception still exists; it is geared to a pattern of stable employment (rather than stable income) with subsidies going mainly to permanent workers or employees, which seems to be an obstacle in combating unemployment. There are many aspects of the Colombian and world economy which would appear to make a review of the protection system necessary, so that there are simultaneous guarantees of full and undiscriminating respect for the right to work and to an income, and of national economic growth, which is inevitably linked to the new context of the world economy.

82. Another worrying aspect of labour management in Colombia is the number of children and young people who work. It is estimated that nearly 2.5 million children under 18 years of age are working, of whom 948,000 are under 14. In many cases the working day is extremely long and the remuneration below the minimum legal wage (data supplied by the Colombian Family Welfare Institute).

5. A healthy environment

83. Natural resources and the environment are steadily deteriorating and becoming exhausted. It is estimated that every year 500,000 hectares of land are deforested, with the resulting impact on local ecosystems, the production of oxygen and water, and pollution by erosion. The information on pollution due to solid wastes is disturbing. Water and air pollution exist on an enormous scale.

84. Generally speaking, environmental problems in Colombia are indicative of the lack of a broad awareness of the need for the protection and rational use of natural resources, although an interest in good environmental management, promoted by certain public bodies, companies, teaching institutions and NGOs, is beginning to develop.

6. Food

85. The internal armed conflict is having a negative impact on the enjoyment of this right, not only because large tracts of farming land have been abandoned on account of the violence, but also because the various protagonists in the conflict restrict the entry of food into many municipalities. Malnutrition is as much as 8 per cent among children under the age of 15.

D. Particularly serious aspects of the situation of human rights and international humanitarian law

1. The paramilitary phenomenon and the "Convivir" associations

86. In the context of its counter-insurgency activities, the Government of Colombia issued Decree No. 3398 in 1965. This was converted to permanent law by Act No. 48 of 1968, whereby the organization and promotion of groups of armed civilians, known as "peasant self-defence groups", were legalized. Members of the armed forces supplied these groups with arms, trained them and provided them with logistic support as a back-up to the armed forces and police in conflict zones. People who considered that their interests were threatened viewed the establishment of the "self-defence groups" favourably and supported their activities. According to reliable information supplied to the Office of the High Commissioner, even today there is a worrying link between certain sectors of the local economic and political elites and paramilitary groups. The "paramilitary" phenomenon developed more strongly after 1980, when these groups stepped up the selective physical extermination of political opposition leaders, trade-union and social leaders, and State officials accused of collaborating with the guerrillas.

87. Act No. 48 of 1968 remained in force until 1989, when the "peasant self-defence groups" were declared illegal owing to their activities getting out of hand and their obvious links with drug traffickers. However, no provision was made for effectively dismantling them nor was there a clear demarcation with the State.

88. At the present time, according to the monitoring bodies and NGOs, the paramilitary groups are responsible for most of the extrajudicial executions, torture and enforced disappearances. The Office has also reached this conclusion from the complaints it has received. During 1997, the action of the paramilitary groups continued to spread throughout the country and recently to areas under guerrilla control.

89. In their travels around the country, Office personnel have observed the widespread terror among the civilian population in the face of the selective executions and massacres, preceded by the torture of the victims, disappearances, illegal checks on identity or travel, and restriction of access to food and medicines carried out by the paramilitary groups; these practices are giving rise to mass population movements. These seem to be the methods chosen by these groups to spread terror in regions in which the population are accused of "helping the guerrillas". The presence of paramilitaries in rural areas was also observed by members of the Office.

90. On the basis of the complaints received and observation of the phenomenon in the field, the Office's view is that a considerable number of the acts of violence by the paramilitaries are carried out with the tolerance, not to say complicity, of public servants, particularly members of the armed forces and the National Police, as was seen in the past in the Trujillo and Riofrio cases. This also so far seems to be the case with the massacre which took place between 15 and 20 July in the town of Mapiripán (Department of Meta), where a large group of paramilitaries, composed of members of the United Self-Defence Groups of Colombia, murdered an as yet undetermined number of persons (at least 28), and no authority took action to prevent them. Witnesses agree that the paramilitaries arrived by plane in San José del Guaviare, which is a few kilometres from Mapiripán and the headquarters of the VII Army Brigade. The same witnesses assert that they were brought to Mapiripán in heavy vehicles and boats. Mobile Brigade No. 2 is also stationed in the region.

91. According to the information received by the Office, there is a general impression that combating the paramilitaries has not been a priority for the armed forces. However, senior officials of the Office of the Procurator-General of the Nation told the High Commissioner's Office that they had no evidence of the existence of an institutional policy of support for paramilitary activity by the Government or the General Command of the armed forces. In his most recent report to Congress, the People's Advocate, who heads a monitoring body which is part of the Government Procurator's Office, said that the paramilitary groups "have become the illegal arm of the armed forces and police, for whom they carry out the dirty work which the armed forces and police cannot do as authorities subject to the rule of law". For the People's Advocate, paramilitary activity represents "a new form of exercising illegal repression with no strings attached" 6/ (see section III, "Follow-up of international recommendations by the Colombian State").

92. The paramilitary problem has become even more complex owing to the existence of groups of armed civilians who are legally authorized to carry out activities similar to those of the armed forces and police. Special Decree No. 356 of 1994 established the "special private security and vigilante services", whose members were authorized to ensure their own security in high-risk areas and to use combat weapons. This gave rise to the "Convivir" associations, which have now been stripped of that name but have by no means contributed to clarifying the relations between the State and paramilitary activity. In practice, observers of the human rights situation in Colombia find it very difficult to distinguish between the activities of the paramilitary groups and those of certain "Convivir" associations since in many cases there are areas in which they coincide, converge or supplement or replace each other. The victims of these activities are incapable of distinguishing the groups to which the perpetrators belong, and refer indiscriminately to "los paracos" (i.e. the paramilitaries) or "the Convivir people". Reliable information received by the Office refers to the participation of known paramilitaries in "Convivir" associations, some of them with arrest warrants against them.

93. The "Convivir" associations have been operating without effective control or adequate supervision. In November 1997, the Office of the Superintendent of Private Vigilante and Security Groups, which is responsible for overseeing them, admitted that it was not capable of carrying out this task effectively; in many places they have operated with the exclusive and irregular support of the governors of departments or military commanders.

94. According to the Office of the Procurator-General of the Nation, by the end of 1997 at least 35 criminal investigations were in progress into members of these associations who were accused of homicide, torture and other serious crimes. Complaints received by the Office of the High Commissioner in Colombia also report cases of executions, torture, disappearances and other crimes committed by their members.

95. In 1997 a lively public debate took place on the legitimacy of these associations. Their supporters spoke of the right of self-defence and the cooperation which citizens owe to the armed forces and police. Their opponents mentioned the danger of encouraging paramilitary activity and heightening the spiral of violence (see section III, "Follow-up of international recommendations by the Colombian State").

2. Enforced displacement

96. The enforced displacement of persons continues to be one of the most serious consequences of the armed conflict. According to figures provided by the Advisory Office for Human Rights and Displacement (CODHES), some 180,000 persons are displaced every year, and the total number of displaced persons since 1985 is estimated at 1 million. These figures tally with the analysis by the People's Advocate. The Colombian Government, for its part, puts the number of persons displaced since 1995 at 300,000.

97. The causes of this enforced displacement vary, but chief among them are violations of human rights and international humanitarian law in the context of the domestic armed conflict. The enforced displacement of the civilian

population is being used as a war strategy by the armed forces, police and paramilitary groups. In many cases it is the population suspected of providing a basis of support for the insurgents who are forced to leave their homes and workplaces. Once the inhabitants have been evicted, any land of strategic value in economic or military terms is repopulated with supporters of the military or paramilitary forces thus creating security zones needed to control the land. The guerrillas, for their part, provoke the displacement of inhabitants whom they consider hostile to their activities or who have infringed the rules of conduct imposed by the insurgent group in the areas under its control.

98. However, the enforced displacement of the population does not reflect solely military or political objectives. A clear convergence may be seen between the counter-insurgency strategy and the interests of certain economic sectors which support paramilitary groups with the aim of increasing their hold over natural resources and productive land. The Office of the High Commissioner has received testimony from peasants who have been robbed of their land by paramilitaries in the service of drug traffickers or local landowners, or who have had to sell their land cheaply before leaving the region under death threats.

99. Similarly, the displacement of individuals continues to constitute a substantial part of the total number of displacements and, for the most part, involves peasants and social, trade-union and community leaders, who are forced to move with their families after receiving threats or being attacked or harassed. It is difficult to obtain an approximate figure for the number of "individual" displacements since in the majority of cases the victims choose not to report what has happened, preferring anonymity in the area where they resettle.

100. Often displacement does not end the persecution. The Office has been informed of political violence against displaced persons in their new place of residence and against organizations of displaced persons. The displaced persons settled in the camps of Bahía Cupica (Department of El Chocó) and Pavarandó (Department of Antioquia) have been threatened with death and harassed by paramilitary groups. The President of the Displaced Persons' Association in Rioblanco (Department of Tolima) was assassinated in September 1997 and the Vice-President of the Association has received death threats. Several members of NGOs working with displaced persons have also been the victims of serious violations. According to information supplied by the National Mutual Aid Association (ANDAS), three of its members and leaders were assassinated in 1996 and 1997, one has been missing since 15 April 1997, and six have been arrested and accused of contempt of authority.

101. The situation of the displaced population, both in collective settlements and on the outskirts of cities, is critical in the extreme and takes the form of lack of access to basic health, food, housing and education services, and serious overcrowding.

102. There are no official statistics on those mainly responsible for the displacements, but CODHES, along with the Catholic Church and other institutions, says that in 1996 paramilitary groups were responsible for 33 per cent of the displacements, a further 29 per cent were caused by the

guerrillas, and 16 per cent by the armed forces and police. The Office has reason to believe that in 1997 the percentage of displacements attributable to the paramilitaries was considerably higher.

103. The phenomenon of displacement grew in the course of 1997. Beginning in December 1996 a number of mass displacements occurred in the Department of El Chocó as a result of the paramilitary presence in the area of Bajo and Medio Atrato, the fighting between the guerrillas and paramilitaries in January 1997 and the indiscriminate bombing by the army as part of "Operation Genesis" initiated on 23 February 1997, aggravated by the control of food and medical supplies by the army and paramilitaries as a means of combating the guerrillas. In these circumstances, between 15,000 and 17,000 persons were forced to leave the area, most of them in the first four months of the year.

104. In its endeavours to find solutions to the precarious situation of the displaced persons, the Government has encouraged these communities to return to their places of origin. However, it has been observed from information provided by various organizations, and from what the Office has learned for itself, that this solution was promoted even though minimum conditions of security could not be guaranteed and the causes which gave rise to the displacement had not been eliminated. In Rioblanco (Department of Tolima), approximately 2,000 persons were displaced from the village of Maracaibo in September 1996 as a result of threats and murders of villagers by members of a "Convivir" association. A week later, about 70 per cent of the displaced persons returned to their village as part of a return plan under the protection of the army's 6th Brigade. However, when further murders took place, at least 300 peasants felt obliged to move out once again (see section III, "Follow-up of international recommendations by the Colombian State").

105. The Representative of the Secretary-General on internally displaced persons has been closely following the situation of displaced persons in Colombia. In his report to the fifty-second session of the General Assembly (A/52/506 of 7 November 1997), he stressed the important role of field offices, including the Colombia Office, with regard to the situation of displaced persons. On that occasion he said that greater involvement on the part of the international community in Colombia, as he had requested following a visit to the country in June 1994, was even more pressing than before (paragraph 32). In January 1998 the Representative discussed the topic of displaced persons in Colombia in greater detail in a letter to the High Commissioner.

106. In view of the magnitude of the problem, the Government of Colombia sent an invitation to UNHCR to study the possibility of opening a permanent office in Colombia. The High Commissioner for Human Rights welcomes the possibility of a UNHCR presence in Colombia, with which it would cooperate and coordinate activities as with the other protagonists present in the field. It is clear that the participation of the Office of the High Commissioner in Colombia in the issue of displaced persons would entail greater efforts and financial resources in order to carry out this very important task. However, the Office has participated as an observer in a return programme for a community of displaced persons, at the request of the victims themselves.

3. Victims of violations of human rights and international humanitarian law

107. The civilian population is the main victim of violence by the various protagonists in the conflict. Local populations and authorities living in the conflict zones are exposed to the actions of all the armed participants. As has been seen in preceding paragraphs, most of the victims of violations of human rights and international humanitarian human law are to be found among the peasant population.

108. The ethnic minorities, living mainly in rural areas, have been the target of numerous attacks by all the protagonists in the armed conflict. In recent years, a large number of indigenous communities have declared their neutrality to the parties to the conflict, and requested that none of the armed participants, including the armed forces of the State, should involve them in their actions. The data bank of the Centre for Research and Popular Education (CINEP) contains 47 cases of indigenous victims of various abuses, including 25 murders, between October 1996 and September 1997.

109. The Office of the People's Advocate reported the murder of nine members of the Koreguaje indigenous group in the Department of Caquetá at the hands of members of the FARCs in September 1997. In August of the same year, the FARCs allegedly murdered 13 indigenous inhabitants in the community lands of San Luis y Aguas Negras, municipality of Milán, Caquetá. The People's Advocate also condemned the indiscriminate bombing of an area inhabited by members of the Pijao indigenous group in the Departments of Caquetá, Meta and Guaviare, as part of the "Destructor II" campaign carried out by the army against the FARCs from September 1997. The bombs fell a few metres from the houses, endangering the lives of 220 persons. Houses were burned down, animals killed and crops bombed. The Office of the People's Advocate further reported that the armed forces and police claimed to have used indigenous children as informers about the movement of the subversive groups in the area.

110. The figures for persons missing and abducted are alarming and are given in another section of this report (paragraphs 41-46). Most of these crimes occur in the context of the armed conflict or in close connection with it. The effects concern not only the victims themselves, but also their family members and create psychological anxiety and social polarization, which seriously affect all of Colombian society.

111. However, as has already been said, not all human rights violations take place in the context of the armed conflict. Because of the polarization of positions resulting from the conflict, persons engaged in legitimate activities are seen as part of the conflict and are in a critical position precisely because of their activities. Thus, opposition political activists, social and trade-union leaders, human rights activists, State officials responsible for ensuring respect for human rights and journalists have their fundamental rights violated. In this regard, the Special Rapporteur on the independence of judges and lawyers has, in his report on Colombia (E/CN.4/1998/39/Add.2, chap. IV), expressed his concern about the working conditions in which members of the legal profession, including judges, prosecutors, lawyers and human rights advocates, have to perform their duties.

112. Members of the XX Army Intelligence Brigade informed the Office in Colombia that 85 per cent of the persons they consider to be subversive are engaged in what the military refer to as the "political war". They include in this term the activities of some NGOs, the trade unions, some political parties such as the Communist Party, and even some members of traditional parties. According to this interpretation, only about 15 per cent of the "subversives" have taken up arms. In a report sent to the director of the Public Prosecutor's Offices in Medellín (Antioquia), an army commander stated: "as is well known, subversion comprises an armed section and a political section, which comprises all of the left and is supported by various bodies which they control, particularly in areas of influence such as human rights offices, which in turn are supported by national and international non-governmental organizations".

113. In accordance with this view of the situation, attacks on human rights activists increased considerably in 1997. In the past year more than 20 members and leaders of various human rights organizations have been murdered. Others have been victims of enforced disappearances, threats and harassment, which have forced them to move or to go into exile. An example of this is the case of the members of the Colombian section of Amnesty International, who were forced to close their office and leave the country. The international community also voiced its disgust at the attack on two members of CINEP, Mr. Mario Calderón and his wife Elsa Constanza Alvarado, who were brutally murdered in their home in May 1997. In the attack Mrs. Alvarado's father was also murdered and his wife seriously wounded. The Colombian authorities report that six of the alleged perpetrators of the crime were captured.

114. It is a matter of concern that, on the basis of denunciations by State intelligence bodies, proceedings have been initiated in regional courts against human rights activists and lawyers of persons detained for political offences. In January 1997, several members of ANDAS were arrested and accused of the crime of rebellion, including Ana Rengifo, Vice-President of the Association, Ramón Alberto Osorio, trade-union leader and member of the Colombian Communist Party, and Eugenio Córdoba, trade-union member. The case against these persons was dismissed by the Office of the Procurator-General and they were released. It is apparent from the case file that the legal proceedings initiated by the regional Procurator's Office were based on statements by army informers, of whom two revealed their identity and three appeared as faceless witnesses, and on an intelligence report from the Unified Action Groups for the Freedom of Individuals (GAULAs), made up of members of the army and the police specializing in crimes of abduction and extortion. Following his release, Eugenio Córdoba was murdered in Quibdó on 23 June 1997, while Ramón Alberto Osorio has been missing since 15 April 1997. In August 1997, Ana Rengifo was rearrested and accused of rebellion; she was released in late December 1997.

115. Persons from economically or socially marginalized sectors also suffer violations of fundamental rights. The practice of extrajudicial executions of beggars, ordinary criminals, homosexuals, prostitutes and persons belonging to other impoverished or marginal segments of society, particularly street children, continues in Colombia. According to the information available, violations of this type occur mainly in the towns and cities. Complaints

received by the Office of the High Commissioner point to members of the "Convivir" associations and the armed forces and police as possible perpetrators.

116. Attacks on women and children should also be mentioned, although full information on their gravity is not available. Many acts of violence against women, for example, violations of a sexual nature, are not reported. More than 58 per cent of displaced persons are female, and of these 24 per cent are widows with dependent children. Outside the context of the armed conflict there are still forms of sexual discrimination consisting of a real deterioration of the enjoyment of rights by women, although Colombia has, inter alia, ratified the Convention on the Elimination of All Forms of Discrimination against Women, and its Constitution recognizes women as having full equality with men (see section III, "Follow-up of international recommendations by the Colombian State").

4. The functioning of justice

(a) The problem of impunity

117. Both the Colombian authorities and the NGOs agree that the failure to investigate and try offences which constitute human rights violations and war crimes is one of the factors which has contributed most to the continuation of many and repeated forms of behaviour violating the rights protected by the international instruments. The People's Advocate has said that on the difficult human rights scene in Colombia "impunity is one of the basic ingredients, constituting a powerful feedback for violence and leading some people to take justice into their own hands, thus creating an almost unbreakable vicious circle".

118. This phenomenon had already been observed by the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions when they visited Colombia in October 1994 and stated in their joint report that "The first and most serious observation with regard to the administration of justice relates to the weakness of the system which is reflected in the high rate of impunity. Impunity is both the cause and the consequence of violence and, in particular, of human rights violations" (E/CN.4/1995/111, para. 77).

119. In its report of October 1996, the Commission on Rationalization of Expenditure and Public Finance, an official advisory body, stated that the current level of impunity was greater than 99.5 per cent. The Commission asserted that in Colombia a mere 20 per cent of offences were reported and that of these only 5 per cent lead to the preferment of charges by the Office of the Public Prosecutor. The members of the Commission also maintained that barely one out of every 100 offences committed reaches the trial stage. According to the People's Advocate, these figures have remained more or less constant in recent years. Similarly, the Special Rapporteur on the independence of judges and lawyers, who visited the country at the end of 1996, said in his report on the visit that failure to properly investigate and prosecute human rights violations, both at civil courts and, in particular, at

military courts, was the most serious concern with respect to the administration of justice in Colombia (E/CN.4/1998/39/Add.2, first paragraph of chapter V).

120. In the field of human rights, impunity has assumed alarming proportions. The Human Rights Unit of the Office of the Procurator-General of the Nation, established in December 1994, reports that between October 1995 and September 1997 the unit witnessed just 260 trials. On 30 September 1997, 137 of these were at the preliminary proceedings stage and 82 at the examination stage. These trials concerned 27 massacres, 30 enforced disappearances, 88 homicides, 17 disappearances followed by the homicide of the victim and a further 17 punishable offences.

121. Impunity has been further strengthened by the fact that the great majority of proceedings for human rights violations and war crimes in which serving members of the armed forces and police appear as defendants have to date come under the jurisdiction of the military criminal courts. Under the Colombian Constitution, the investigation and trial of crimes committed by serving military and police personnel "and related to their service" are the responsibility of the military courts. An excessively broad interpretation of the sphere of military jurisdiction meant that for many years it was assigned punishable acts which had no functional relation of any kind with the normal tasks of the armed forces. As a result of this interpretation, proceedings for crimes against humanity were removed from the jurisdiction of the ordinary courts.

122. As the two Special Rapporteurs on torture and on extrajudicial executions stated in their joint report (E/CN.4/1995/111, para. 87), military criminal justice in Colombia is harsh in the case of violations of police or military regulations, whereas in respect of offences against the civilian population it is affected by cover-ups, partiality and the pressuring of witnesses. This bias has taken the form of persistent leniency on the part of the State in punishing members of the armed forces who commit human rights violations or infringe humanitarian standards. The Special Rapporteur on the independence of judges and lawyers has said in his report that active-duty officers try their own subordinates for human rights offences committed against civilians. In his view they lack the necessary independence and impartiality to try cases in which members of the same body are involved (E/CN.4/1998/39/Add.2, chap. V).

123. The Office of the High Commissioner in Colombia has observed that, even after Constitutional Court decision C-358/97 of 5 August 1997 became enforceable, restricting the scope of the jurisdiction of the armed forces and police, the latter has continued to protect persons responsible for punishable acts which have no connection with military or police service. The Office observed this in two recent cases. The first was the massacre of 20 indigenous inhabitants in December 1991 on the El Nilo estate in the municipality of Caloto (Department of Cauca); in the relevant proceedings the Inspector-General of Police rejected the application for transfer to the ordinary courts and ordered the officer accused to be released. The second was the enforced disappearance, in October 1987, of 18 persons who were seen

for the last time in the Magdalena Medio area. In the relevant trial high-ranking army officers and other military personnel appeared as defendants, but were acquitted at first instance by a judicial decision of 18 July 1997.

124. Decisions of the Disciplinary Division of the Supreme Council of the Judiciary handed down subsequent to the ruling of the Constitutional Court and relating to the scope of military criminal jurisdiction still appear to be at variance with the court's case law in this regard. The armed forces have told this Office that the Military High Court had transferred 33 cases of military personnel accused of various offences to the ordinary courts.

(b) Regional justice

125. Regional justice as it is known was established by Decrees Nos. 2266 and 2271 of 1991, which converted to permanent status the provisions which had been issued in 1988 under the emergency powers of the state of siege, to organize what was termed public order jurisdiction. Regional justice was originally established for a period of 10 years as from 10 July 1992. Act No. 270 of 1996 reduced this period stating that in any case its jurisdiction would not extend beyond 30 June 1999.

126. The system of regional justice covers a wide range of offences which include terrorism, conspiring to commit an offence, abduction, extortion, torture, threats, homicide, threats and wounding for terrorist purposes, rebellion and sedition.

127. The regional justice system enables judicial officers and witnesses to act without revealing their identity, practically enabling them to remain anonymous, does away with public hearings, unduly extends the deadlines for the investigation and restricts to the fullest possible extent the grounds for provisional release, to the grave detriment of the right to a proper trial (see paragraphs 61-63), the presumption of innocence and the right of defence. In the opinion of the People's Advocate, regional jurisdiction places severe restrictions on fundamental rights and has not been effective in combating delinquency and impunity.

128. The concealment of identity, applied in the actual proceedings of regional justice, has been justified as a means of protecting the lives and integrity of the judicial officers and witnesses who take part in the trial. This is achieved, however, at the cost of denying the defence any possibility of examining the impartiality of the prosecutor, judge or magistrate conducting the trial, and hence denying it grounds for challenging his right to officiate.

129. The Office of the Attorney-General of the Nation has observed irregularities in regional justice proceedings which, in its view, may constitute a common practice, such as including in a trial, under different codes or keys, a single unidentified deponent, thus making it appear that his statements come from several witnesses. Another irregular procedure is to take new evidence from an unidentified witness who has already made a

statement, making it public this time in order to make the second statement seem to come from a different person who confirms what was said by the first witness.

130. In practice, the functioning of regional justice has made it easier for members of the armed forces and police, acting as "faceless witnesses" in trials, to make unsubstantiated accusations against persons whom they have come to consider as subversive, although they are engaged in lawful activities, because of their work in support of human rights or in the social or trade-union sphere.

131. In addition to what has been described above, the concern of many defence lawyers has been made public about the fact that, in some trials and under the cover of concealed identity, persons belonging to the State intelligence services or recognized informers of the official security bodies have become principal, if not sole witnesses. This type of situation was admitted by the Office of the Procurator-General of the Nation in August 1997, when it discovered that in proceedings against members of the Workers' Trade Union (USO) one of the unidentified witnesses was an army and National Police informer who had made informing his regular means of livelihood.

132. As a result of the activities of the regional prosecutors and judges, many Colombians have suffered severe violations of their fundamental rights by being linked to proceedings at an advanced stage of investigation and thus being deprived of an opportunity to defend themselves, being subjected to measures of restraint on the basis of confessions obtained under pressure or opportunist denunciation, and finding themselves deprived of their freedom for excessive periods, without trial or conviction.

(c) Restriction of the effectiveness of the remedy of habeas corpus

133. The effectiveness of the remedy of habeas corpus is currently restricted by provisions which were initially adopted as emergency legislation for the state of internal disturbance, and subsequently made part of permanent legislation by Congress. According to the laws in force, a decision on habeas corpus may only be taken by criminal judges, and applications for the release of a person who is legally deprived of his freedom must be formulated solely within the proceedings in questions. Both restrictions are contrary to article 9, paragraph 4, of the International Covenant on Civil and Political Rights.

(d) Situation in prisons

134. The figures of the National Penitentiary and Prison Institute also give a clear picture of the crisis in the legal system. The prison population in Colombia numbered 40,617 in May 1997, distributed among 176 establishments designed to house 28,332 persons, thus exceeding the State's prison capacity by some 42 per cent. According to the Office of the People's Advocate, 45 per cent of the prison population consists of persons who have been charged and are awaiting trial.

135. During 1997, there were more than 50 revolts led by prisoners demanding decisive action to deal with the overcrowding to which they were subjected,

effective sanctions against administrative corruption within prisons, improvements in medical care, genuine access to social rehabilitation programmes and the allocation of sufficient resources to expedite the operation of the judicial system.

136. Women prisoners have also made repeated complaints concerning the situation of their children, the constant abuses committed by warders against them during searches and the failure to comply with the legal provisions concerning marital visits (see section III, "Follow-up of international recommendations by the Colombian State").

III. FOLLOW-UP OF INTERNATIONAL RECOMMENDATIONS BY THE COLOMBIAN STATE

137. The Office of the High Commissioner has noted that considerable, but insufficient, efforts have been made by the Colombian Government and State to overcome the serious situation with regard to human rights and humanitarian law in Colombia.

138. The Colombian Government has informed the Office that the principal courses of action adopted by it to overcome the human rights crisis are aimed at the implementation of the recommendations deriving from the various United Nations bodies and other international organizations. It has further stated that the limited success achieved through the measures adopted is due to the persistent character of the violence, the intensification of the armed conflict and the short period which has elapsed since the measures were initiated.

139. Among the governmental initiatives particular attention should be drawn to those aimed at exploring possibilities of a process of political negotiation concerning the armed conflict. To this end the Government appointed two officials to report to it on the matter. In addition, on the Government's initiative Congress enacted, in late 1997, a law establishing the National Peace Council, which will be responsible for putting State policies to end the conflict on a permanent footing and working towards national reconciliation.

140. Taking into account the recommendations made by various mechanisms of the United Nations Commission on Human Rights and by the Human Rights Committee, the Government did not declare a state of emergency in 1997. The last state of internal disturbance was declared in November 1995 and continued until July 1996, although its provisions remained in effect until 25 October 1996.

141. Since its establishment in Colombia, the Office has been invited to participate in the activities of the Commission for Analysis and Advice on the Implementation of the Recommendations of the International Human Rights Bodies, established by Presidential Decree No. 1290 of 31 July 1995. Within this Commission, the Office explained the views of the bodies and special mechanisms of the United Nations on such matters as military jurisdiction, regional justice, enforced disappearance, enforced displacement, private security and vigilante services, the phenomenon of paramilitary activity and the situation of human rights activists.

142. Attention should also be drawn to the establishment by the Government of joint working commissions in the field of human rights. Most prominent among them are the Inter-Agency Commission for the Review of Criminal Provisions which may be related to Social Protest, the Workers' Human Rights Commission, the Standing Commission on Indigenous Territories, and also the Council for Consultation with Indigenous Peoples and Organizations. It should be noted that a Human Rights Committee for the Colombian Agricultural Sector of the Ministry of Agriculture and an Office for the Promotion and Protection of the Human Rights of Workers have been recently created. The Office of the High Commissioner closely follows the work of these government initiatives. (It must be emphasized that some of these bodies are not yet operational.)

143. In 1997, the Government presented to Congress the bill on reform of the Military Penal Code which the drafting committee had submitted in 1996. The Office lent its assistance to the inter-agency commission responsible for the final version of the bill. However, not all its recommendations were accepted. The bill does not expressly establish the non-applicability of the ground of due obedience for cases in which orders giving rise to human rights violations have been carried out. It also limits the intervention of the claimant for criminal indemnification in military proceedings. It should also be noted that the trial of senior military officers in a single instance by the Supreme Court of Justice constitutes a violation of article 14 of the International Covenant on Civil and Political Rights. In addition, the bill does not fully develop the principle of the independence and autonomy of judges, since the military judges are appraised by the operational commanding officers. At the end of 1997 Congress postponed consideration of the bill until March 1998.

144. Attention should also be drawn to the Constitutional Court's decision of 5 August 1997 ruling against the extension of the criminal jurisdiction of the police and armed forces to cover acts going beyond service-related offences. In the Court's view, such an extension exceeds the limits which the Constitution has imposed on the sphere of competence of the military courts. According to the above decision, these courts must not and may not try criminal acts, such as crimes against humanity, which are completely at variance with the constitutional responsibilities of the armed forces and national police and constitute crimes of exceptional gravity. Consequently, proceedings for extrajudicial executions, torture, other violations of human rights and other extremely serious conduct in which military or police personnel appear as defendants must be heard by the ordinary courts. The Office of the High Commissioner has been informed that a committee composed of a number of institutions, including the Office of the Procurator-General of the Nation, is evaluating cases which, pursuant to decision C-358/97, should be transferred from military jurisdiction to the ordinary courts. The Criminal Affairs Division of the Government Procurator's Office (Procuraduría Delegada para el Ministerio Publico) reported that, following the Court's decision, the Division had requested the military courts to transfer to the ordinary courts, on grounds of jurisdiction, 232 cases currently within military jurisdiction. As of 29 January 1998, the military courts had transferred 141 of the requested cases and refused to transfer 26; 65 cases were still being considered.

145. The Office of the High Commissioner drew the authorities' attention to the advisability of taking account of the recommendations of the various bodies and special mechanisms of the United Nations on the elimination of the regional justice system before the time limit set by law, and on the need to ensure in all trials procedure consistent with the guarantees laid down by the international instruments. Nevertheless, in a communication of 19 September 1997 addressed to the Director of the Office, the Minister for Foreign Affairs said that the Colombian State had given regional justice "a binding time limit", which will expire in 1999. According to the Minister, this time limit "has been considered necessary in order to implement the gradual dismantling of this jurisdiction". The Office is following closely the debates on a bill, currently before Congress, which would terminate regional justice before the time limit referred to by the Government.

146. The High Commissioner acknowledges the steps taken by the Colombian Government to overcome the dramatic situation facing human rights activists. Prominent among them was Presidential Directive No. 011, which recognizes the legitimacy of the work of the human rights NGOs and the contributions which these organizations are making to the rule of law. However, the Office in Colombia is duty-bound to state that the conditions in which the activists are working, summarized in this report, demonstrate that the Government's efforts to protect them have proved insufficient. What are needed are specific measures to control public officials who transgress the guidelines contained in the Presidential Directive, to provide effective protection for human rights activists and to prevent further abuses against them.

147. The Ministry of the Interior has a programme of special protection for witnesses and threatened persons, which was allocated substantial resources at the beginning of 1998. However, the programme requires even greater human, logistic and financial resources in order to function more effectively.

148. The Government also introduced a bill characterizing the offence of enforced disappearance of persons. The High Commissioner regrets that most of the recommendations and observations made by her Office in Colombia within the committee which drafted the bill have not been taken into account in the final text. In a communication of 12 December 1997, the Minister for Foreign Affairs explained to the Director of the Office the Government's reasons for not including in the bill several of the suggestions that had been made to it. The Office observes that the definition of the offence contained in the bill is not in conformity with the relevant international instruments. In addition, in the proposed provisions due obedience as a ground for exemption is not excluded, the military courts are not declared incompetent to try persons accused of the offence of enforced disappearance, the exclusive competence of the ordinary judges to try this offence is not established and the right of the victims to indemnification is not recognized. This bill has not yet been approved by the legislature.

149. On the question of displacement, the Government approved Act No. 387 of 18 July 1997, which seeks to respond to the serious problem created by the enforced migration of thousands of Colombians. This Act created a nationwide system for dealing with the displaced population and established institutional competence and sources of financing to tackle the problem. At the beginning of 1998, the Government adopted a plan of action, within which

40 billion pesos are allocated to efforts to improve the serious situation of the displaced population and to enhance institutional coordination. However, the policies adopted do not include measures ensuring the effective performance by the State of its duties in respect of displacement and displaced persons. The attention given to displaced persons is inadequate, and the lack of coordination between the various bodies dealing with the problem renders most of their activities ineffective. In addition, there are serious deficiencies in governmental measures to deal with problems such as return and resettlement. There are also serious shortcomings with regard to the granting of guarantees and special protection for persons displaced by violence. The Colombian Government has invited UNHCR to cooperate in the search for solutions.

150. Since 1988, special procedures of the United Nations Commission on Human Rights have recommended that the Colombian State adopt measures to combat the phenomenon of paramilitary activity effectively. The United Nations Human Rights Committee reiterated that recommendation in its report of 3 May 1997 (CCPR/C/79/Add.76, para. 31).

151. In the face of the increase in paramilitary activity at the end of 1997, the Government announced a series of measures to combat it and the President of the Republic demanded that the armed forces give priority to action to combat paramilitary groups. Among the measures adopted is the establishment of a "search corps" composed of various State agencies, whose objective is to hunt down members of such groups. In addition, in an information campaign in the press, a monetary reward was offered for the arrest of a number of paramilitary leaders. In January 1998, the General Command of the armed forces published a document entitled "General strategy of the armed forces", in which undertakings to combat paramilitary activity are given. Nevertheless, the Office has been informed that some 400 warrants have been issued by the Public Prosecutor for the arrest of members of paramilitary groups but none of these wanted persons has been apprehended by the police or the armed forces. The armed forces informed the Office that they had arrested 35 paramilitaries and released 45.

152. In November 1997, the Constitutional Court declared enforceable Decree No. 356 of 1994, which established the "Special vigilante and private security services", formerly known as "Convivir" associations. The decision ordered the restricted-use weapons issued to these groups to be returned to the General Command of the armed forces. According to the Office of the Superintendent of Private Vigilante and Security Groups, as of 15 December 1997, 237 of the 310 officially registered weapons had been returned. In view of reports of abuses by persons engaged in these services, the Government suspended the establishment of new security associations as from 13 August 1997 and until such time as the reported irregularities were investigated. On 10 February 1998, the Government informed the press that, on the basis of the conclusions reached in the investigation, the licences of 15 "Convivir" associations had been cancelled and that the licences of a further 69 would not be renewed; of this number more than 15 are being investigated by the Superintendent of Private Vigilante and Security Groups. Within the framework of its advisory functions, the Office stressed that consideration should be given to the possibility of repealing the provisions of the above-mentioned Decree, bearing in mind the recommendations made to

Colombia by the United Nations Human Rights Committee and other protection mechanisms. However, the executive did not consider it necessary to repeal the provisions of Decree No. 356, and on 16 December 1997 it adopted new regulations. According to these regulations, vigilante and security services are forbidden to engage in any activity which infringes the right to privacy, the inviolability of the home and the free movement of persons. They are also forbidden to employ restricted-use weapons or exclusive-use weapons of the armed forces and to encroach on the sphere of competence reserved for the legitimate authorities. The Decree also stipulates that the Superintendent of Private Vigilante and Security Groups may not authorize such services in zones of conflict.

153. On 28 October 1997, Congress, by Act No. 408, approved the Inter-American Convention to Prevent and Punish Torture. The Convention is awaiting ratification.

154. In November 1997, the Colombian Government introduced a bill for the reform of the Juvenile Code. Several national and international institutions for the defence of the rights of the child, including UNICEF, have suggested a more far-reaching analysis of the subject, and also amendments to several aspects of the bill, in order to ensure that the new code is in conformity with the provisions contained in the International Convention on the subject. The suggestions made relate to the recruitment of juveniles into the armed forces, child labour, the administration of juvenile justice and adoption procedures. The bill is to be discussed at the next legislative session of Congress.

155. Congress approved Act No. 418 of 26 December 1997, which prohibits the recruitment of persons under the age of 18 into the armed forces. However, the law allows for the recruitment of persons over 16 years of age with parental consent, although, as minors, they may not be sent to combat zones or used in armed confrontations.

156. In December 1997, Congress passed a law establishing an "alternative sanction" scheme for the prison population with benefits such as conditional release, leave passes and the commutation of prison terms into community service, with a view to alleviating prison overcrowding. This legislation, while providing no comprehensive answer to the huge prison problem, has aroused great expectations among prisoners and defence lawyers alike. Early in 1998, the Government announced plans for the building of new prisons, with the possible use of private capital.

157. A number of State institutions have developed programmes to promote a culture of coexistence and peace. Special assistance was offered to the Office of the High Commissioner on the occasion of Human Rights Day on 10 December with promotional messages in the mass media. The police and armed forces training programmes have continued and been strengthened, for which the cooperation of UNDP and the Office have been requested.

158. The Office of the People's Advocate has done important work, and has published its fourth annual report to the Colombian Congress, for 1997. The Office of the High Commissioner received the support of the People's Advocate and a number of field visits were carried out jointly with or in cooperation with him.

159. Both the Office of the Procurator-General and that of the Attorney General of the Nation are working to strengthen their special human rights units and to improve general efficiency in action to combat impunity. However, both institutions are facing serious organizational and budgetary problems. The Office has provided open and continuous support to both institutions, within their respective areas of competence.

IV. ACTIVITIES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER IN COLOMBIA

160. The Office conducts its activities within the framework of the Agreement of 29 November 1996 between the Colombian Government and the United Nations (E/CN.4/1997/11, annex). The liaison unit set up by the Office of the President to facilitate the activities of the Office of the High Commissioner has cooperated effectively in establishing relations with the various government institutions.

161. Between April and November 1997, the Office of the High Commissioner, as part of its monitoring activities, received more than 1,350 complaints from individuals, NGOs and government and State institutions. These complaints were received at the facility in Santafé de Bogotá and in the course of visits by staff to various regions of the country (Antioquia, Arauca, Bolívar, Caquetá, Cauca, Chocó, Cundinamarca, Guaviare, Norte de Santander and Tolima). Some of these visits were undertaken jointly with national authorities, NGOs and church officials. In the course of a preliminary check to ascertain the veracity of the complaints, about 140 cases were submitted in writing to the competent national bodies and the Colombian Government. The Office intervened immediately when it received reports of serious cases calling for urgent action and got the competent authorities to provide victims with the necessary protection in some cases.

162. In forwarding complaints to the authorities, the Office coordinated its efforts with the thematic mechanisms of the Commission on Human Rights to ensure the follow-up of cases of extrajudicial executions, torture and enforced disappearance. The Government replied to many of these requests by indicating the judicial or disciplinary authority dealing with the case and the stage which the proceedings had reached. In several cases, the Government simply presented the military authorities' version of the facts designed to discredit the initial account.

163. The most significant activities of the Office in connection with its advisory functions concerned the follow-up to various pieces of draft legislation, including the bill on the reform of the Military Penal Code, the bill on enforced disappearance and the bill on internal displacement, the latter now having been passed. The Office was also asked for its comments on human rights training programmes for the armed forces and the police.

164. As part of its functions of monitoring observance of the recommendations made to Colombia by various United Nations bodies and mechanisms, the Office emphasized those on the disbanding of the rural security and vigilante services, elimination of the regional justice system, removal of offences constituting serious human rights violations from the jurisdiction of the military criminal courts, rejection of the concept of "due obedience" as exonerating the perpetrators of such offences and the adoption of measures to deal with internal displacement. These observations were made at meetings of the Commission for Analysis and Advice on the Implementation of Recommendations of the International Human Rights Bodies (see paragraph 141). The Office also helped in evaluating Colombia's compliance with a number of agreements on cases submitted to the Inter-American Commission on Human Rights (IACHR).

165. During the period in question, the Office received more than 200 invitations to attend various forums, seminars, conferences and workshops on topics relating to the protection of human rights, international humanitarian law and peace, aimed at broad sectors of the State authorities and civil society. The Office attended more than 80 of them as part of its civil society advisory functions.

166. The national and foreign media took an active interest in the Office's work and asked the Director for statements and interviews. In addition to responding to many of these requests, the Office issued eight public statements.

167. The Office maintained continuous contact with the International Committee of the Red Cross, as envisaged in the Agreement, in monitoring breaches of international humanitarian law. Contacts were maintained, in particular, with UNHCR representatives in order to coordinate action on the serious displacement problem. The Office was frequently requested by the authorities, NGOs and displaced communities to provide international supervision and protection.

168. Of special importance were the meetings with the other United Nations agencies present in Colombia to prepare the joint report on Colombia, as requested by the Secretary-General of the United Nations. The report focused on the joint strategy to promote observance of economic, social, cultural, civil and political rights throughout Colombian society.

169. An ongoing dialogue was also maintained with the competent Colombian bodies, civil and military authorities, community organizations and individuals, as well as with members of the diplomatic corps and international agencies, in order to obtain an independent and impartial assessment of the situation with regard to human rights and international humanitarian law.

V. CONCLUSIONS

170. The United Nations High Commissioner for Human Rights thanks the Government of Colombia for the facilities provided to the Office in Colombia in the performance of its functions, and expresses appreciation to all the

national authorities for their support for its activities. It also extends its thanks to all sectors of Colombian society for their reception of the office and cooperation.

171. The High Commissioner thanks donor countries and organizations and expresses the hope that their contribution will continue and grow, to the benefit of the work of the Colombian Office.

172. The High Commissioner is deeply concerned at the gravity and scale of the violations of human rights and breaches of international humanitarian law reported by the Colombian Office. All of them can be considered as serious, gross and systematic. Particularly deplorable are the massacres, extrajudicial executions, murders, practice of torture, enforced disappearances and kidnappings, threats and the enforced displacement of the population.

173. The High Commissioner notes that the internal armed conflict is a major cause of human rights violations, but that many violations of the right to life, due process and freedom of opinion, association and assembly occur outside that context. She recalls that the duty of the State to guarantee human rights applies in all circumstances.

174. The High Commissioner deplores the fact that the parties to the conflict continue to infringe the established norms of international humanitarian law, in particular those aimed at the protection of individuals not directly involved in the hostilities. The High Commissioner also deplores the fact that one of the most serious consequences of the armed conflict is the suffering inflicted on thousands of civilians.

175. The High Commissioner deplores the high number of violent deaths occurring in Colombia both within and outside the context of the armed conflict. The High Commissioner notes that most violations of the right to life have been attributed to paramilitary groups sometimes acting in conjunction with, or with the acquiescence of, members of the armed forces or police. She also condemns the social cleansing operations, the main victims of which include the destitute and street children.

176. The High Commissioner also takes note of the submission to Congress of the draft legislation on enforced disappearances, but regrets the fact that most of the recommendations and observations made by the Office to the governmental drafting committee have not been incorporated in the final draft. Like the Working Group on Enforced and Involuntary Disappearances (see E/CN.4/1998/43, para. 142), the High Commissioner stated that the final text should fully comply with the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance.

177. The High Commissioner views with concern the fact that abduction is a widespread practice in Colombia and provides a livelihood for armed groups, and most strenuously condemns this practice of which so many individuals have been and continue to be victims in Colombia. She takes note of the Presidential Programme for Kidnap Victims, which endeavours to deal with this very serious problem.

178. The High Commissioner is particularly concerned at the alarming increase in crimes committed by paramilitary groups. She takes note of the Government's statements that such crimes do not represent an official policy. She also takes note of the measures recently adopted by the Government to deal with the phenomenon of paramilitary activity. However, the High Commissioner is deeply concerned at the fact that, according to information gathered by her Office in Colombia, some elements of the armed forces and police maintain links with members of paramilitary groups. The High Commissioner is also disturbed to note the ineffectiveness of the armed forces in taking decisive action against such groups. The existence of associations of armed civilians operating with legal authorization exacerbates the paramilitary phenomenon and raises the level of violence.

179. The High Commissioner welcomes the reduction in the number of human rights violations attributed to the armed forces and the police, and takes note of the information provided by the armed forces to her Office in Colombia on the plan to dismiss all military personnel involved in crimes against humanity. She is concerned, however, by the fact that the measures taken by the authorities have not succeeded in ensuring that any support for the activities of paramilitary groups is investigated and punished.

180. The High Commissioner is concerned at the high level of impunity regarding violations of human rights and breaches of international humanitarian law. She reminds the Colombian State of its obligation to conduct exhaustive and impartial investigations of such acts, in order to identify those responsible, bring them to justice, punish them and compensate their victims, in accordance with the provisions contained in the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international human rights instruments ratified by Colombia.

181. The High Commissioner takes note of the submission to Congress of the draft legislation on the reform of the Military Penal Code. She notes with concern, however, that the draft does not include all the international recommendations for ensuring that the operation of the military criminal courts meets the requirements of the human rights Covenants and that the ruling of the Constitutional Court has not yet been given full effect.

182. Another major concern of the High Commissioner is the justice system and its functioning. She deplores continued gross violation of the guarantees of due process, particularly under the regional justice system which the Colombian Government persists in retaining until 1999, in flagrant violation of article 14 of the International Covenant on Civil and Political Rights and contrary to the repeated recommendations of various intergovernmental human rights bodies and mechanisms.

183. The High Commissioner notes that the Government has taken a number of measures to deal with problems impeding or obstructing the enjoyment of human rights. She also notes the existence in Colombia of numerous human rights monitoring institutions and agents. It is regrettable, however, that not all those initiatives follow international recommendations, or the recommendations

made by her Office on the basis of the latter and of international standards, rules and practices. The High Commissioner regrets that the Colombian Government appears unable to provide effective support to human rights monitoring institutions and agents.

184. The High Commissioner is disturbed at the prison situation in Colombia, particularly the overcrowding in detention centres and prolonged periods of pre-trial detention. She takes note of the recently adopted alternative sanction scheme which is designed to alleviate this problem.

185. The High Commissioner is concerned about the situation of minors in Colombia, particularly that of street children and children displaced by violence, all of whom are not only restricted in the exercise of their fundamental rights, but are also exposed to situations which threaten their lives and physical integrity. The conditions in which many children, some of them less than 14 years old, work in order to meet their needs and those of their families are unacceptable. The High Commissioner condemns the recruitment of children into the armed forces in contravention of the relevant international instruments and takes note of the recent measures to deal with this problem.

186. The High Commissioner welcomes the adoption of the Presidential Directive on recognition of the work of human rights advocates but deplores the persecution to which they are subjected, particularly by paramilitary groups, but also by some State officials who, being unaware of the measures taken by the Government, mistakenly equate the work of human rights advocates with subversive or criminal activities. The High Commissioner also deplores the attacks against political activists, State officials responsible for the protection of human rights, members of the judiciary, trade unionists, members of voluntary organizations, journalists and others, whoever the perpetrators may be.

187. The High Commissioner regrets the continued increase in the enforced displacement of people in Colombia in recent years and the failure of the measures adopted by the Government to eradicate the causes of this phenomenon. She is also concerned at the fact that many displaced persons suffer further human rights violations in the areas where they settle. She also regrets that the State authorities have yet to respond adequately to the problems raised by the failure to meet the basic nutrition, health, housing, education and hygiene needs of displaced persons, most of whom are women and children.

188. The High Commissioner notes that in Colombia, as in other countries, enjoyment of economic, social and cultural rights is not entirely satisfactory, despite broad legal recognition. Certain negative practices, and the lack of appropriate mechanisms to combat them, are preventing many Colombians from exercising their economic, social and cultural rights. It is clearly because of the spread and intensity of the conflict, which entails the diversion of public resources and results in enforced displacement of the population, that fewer and fewer Colombians are able to exercise these rights.

189. The High Commissioner also notes the persistence of discriminatory practices affecting in particular the indigenous and Afro-Colombian population, as well as women, in Colombian society.

VI. RECOMMENDATIONS

190. The United Nations High Commissioner for Human Rights, in accordance with the provisions of the Agreement signed on 29 November 1996 and with the observations and recommendations made to the Colombian Government by the Human Rights Committee, the Special Rapporteur on the question of torture, the Committee against Torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Representative of the Secretary-General on the internally displaced persons and other views expressed by United Nations bodies, mechanisms and agencies submits the following 19 recommendations:

Recommendation No. 1

191. The High Commissioner urges the Government to continue its efforts to ensure the effective recognition, at all times and in all places, of the fundamental rights proclaimed in the international instruments with which Colombia has undertaken to comply by ratifying them. To achieve these objectives, the High Commissioner calls on the Colombian Government to take all necessary appropriate and effective measures.

Recommendation No. 2

192. The High Commissioner urges all parties to the conflict to abide by the norms of international humanitarian law, particularly those for the protection of persons not directly involved in hostilities. In particular, combatants must stop carrying out executions, attacks on the civilian population, enforced disappearances, kidnappings for ransoms, the enforced displacement of persons and other equally reprehensible practices.

Recommendation No. 3

193. The High Commissioner urges the Government and parties to the conflict to respect the right to life and calls on the Government to adopt or strengthen measures to ensure observance of that right. The Government should also conduct independent and exhaustive investigations into all violations of the right to life, bring the culprits to justice and properly compensate their victims in order to put an end to the spiral of violence and impunity.

Recommendation No. 4

194. The High Commissioner urges the Colombian State to ensure that the draft legislation characterizing the offence of enforced disappearance to be adopted at the next session of Congress conforms fully to the provisions of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.

Recommendation No. 5

195. The High Commissioner urges the Colombian State to ensure that the Penal Military Code reform bill which is to be approved at the next session of Congress conforms fully to the relevant international norms.

Recommendation No. 6

196. The High Commissioner urges the Government to continue to seek ways of eradicating the widespread practice of abduction, and to arrest the culprits and bring them to justice.

Recommendation No. 7

197. The High Commissioner urges the authorities to carry out an effective policy for permanently disbanding paramilitary groups by apprehending, trying and punishing those who inspire, organize, lead, belong to, support and finance them. It is also vital to put an end to the activities of armed civilian groups until recently known as "Convivir associations", in order to eliminate their negative influence on the human rights crisis, facilitate the application of the humanitarian principle of distinction in armed conflict and enable the State to have absolute control, at all times and in all circumstances, over the use of force and weapons.

Recommendation No. 8

198. The High Commissioner recommends that the Government remove from its armed forces and police any persons against whom there is reliable evidence of having supported paramilitary groups, through acts or omissions, or having participated or in any way acquiesced in their activities.

Recommendation No. 9

199. The High Commissioner appeals to the Colombian authorities to take more effective measures against impunity by investigating, trying and punishing all those guilty of human rights violations and war crimes, and recommends full compliance with the ruling of the Constitutional Court.

Recommendation No. 10

200. The High Commissioner invites the Colombian authorities to take immediate steps to guarantee the full operation of the justice system, particularly through the effective protection of members of the judiciary and witnesses in proceedings concerning human rights violations.

Recommendation No. 11

201. The High Commissioner recommends that the Colombian State abolish the regional justice system forthwith, so that all proceedings can be conducted impartially and in public, with full observance of the guarantees of due process, particularly the right to a defence and the presumption of innocence.

Recommendation No. 12

202. The High Commissioner urges the Government to improve prison conditions so that they conform to the relevant international standards.

Recommendation No. 13

203. The High Commissioner urges the Government, armed groups and society in general to ensure that children in Colombia enjoy those rights accorded to them in various international treaties, particularly the Convention on the Rights of the Child. All parties to the conflict are requested to refrain from recruiting children and to expedite demobilization procedures. She also recommends that a study of the problem of children in Colombia should be carried out with a view to finding appropriate solutions.

Recommendation No. 14

204. The High Commissioner recommends that the Colombian authorities ensure proper recognition of the right of human rights advocates to conduct their activities without interference or unlawful hindrance, and without fear for their lives, physical integrity or freedom. The authorities are also urged to guarantee the effective exercise of political rights, freedom of thought and expression, and trade-union freedom, and prevent and punish illegal or arbitrary acts against persons exercising those rights.

Recommendation No. 15

205. The High Commissioner urges the authorities to continue to seek effective measures for preventing enforced displacement, protecting the lives and physical integrity of displaced persons and guaranteeing the freedom and safety of their support organizations. They should also implement policies to ensure the effective exercise of the rights of displaced persons to proper nutrition, medical care, housing and education, both in their present settlements and after their return to their places of origin.

Recommendation No. 16

206. The High Commissioner urges the Government to increase its efforts to guarantee the whole population throughout Colombia the full exercise of economic, social and cultural rights in accordance with the international treaties ratified by Colombia.

Recommendation No. 17

207. The High Commissioner particularly urges the authorities to take account of the recommendations of treaty bodies and special mechanisms of the United Nations Commission on Human Rights.

Recommendation No. 18

208. The High Commissioner urges the Government to redouble its efforts to support publicly, with adequate resources and concrete action, the institutions, including the Office of the Attorney-General of the Nation and

the Office of the People's Advocate, working to ensure the observance of human rights and the rule of law. Similarly, the High Commissioner urges it to support the bodies responsible for the administration of justice, including the Office of the Procurator-General of the Nation, in their task of investigating violations of human rights and of bringing to trial and convicting those responsible.

Recommendation No. 19

209. The High Commissioner urges the Government, the parties to the conflict and Colombian society to continue to explore ways of bringing about national reconciliation and a just and stable peace based on the observance of human rights and compliance with the international instruments recognizing and guaranteeing them, and thus meet the needs of Colombian society as a whole.

Notes

1/ See the agreement on the establishment of an Office of the United Nations High Commissioner for Human Rights in Colombia (E/CN.4/1997/11, annex).

2/ Fourth report of the People's Advocate to the Congress of Colombia, Santafé de Bototá, 1997, p. 214.

3/ "Colombia, derechos humanos y derecho internacional humanitario: 1996", Colombian Commission of Jurists, annual reports series, p. 45.

4/ Newspaper accounts compiled by the Colombian Commission of Jurists.

5/ Fourth report of the People's Advocate to the Congress of Colombia, Santafé de Bogotá, 1997, p. 214.

6/ Ibid., pp. 59-60.